

**UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MONTANA**

In re

**ESPLANADE OF CENTRAL  
MONTANA, INC.,**

Debtor.

Case No. **97-40460-7**

**MEMORANDUM OF DECISION**

At Butte in said District this 10<sup>th</sup> day of May, 2005.

On March 3, 2005, the chapter 7 trustee, Gary S. Deschenes (“Gary”), filed an objection to a request for payment submitted by Alice Ruckman (“Alice”) to Gary and received by Gary on March 31, 2004. Such request was not filed as a proof of claim and is not identified on the claims register for this case. Such request is unsigned and is attached to Gary’s objection to claim, filed March 3, 2005, as Exhibit “A”. The Court did not find any docketed entry for the request for payment from Alice. On March 14, 2005, Alice filed a response to Gary’s objection and requested a hearing for April 21, 2005, at 9:00 a.m., in Great Falls.

On the designated date and at the designated time, the Court conducted a hearing on Gary’s objection and Alice’s response. The Court notes that the CM/ECF system was

inoperative with the Court at the time of the hearing given a third party's excavation of a fiber optics line near Helena, Montana. Alice appeared on her own behalf and testified. The trustee was represented by Gary and testified and provided general background to the Court.

Gary suggested that the request submitted by Alice may be an informal proof of claim. No employment application for Alice, or corresponding order of approval was found in the docket for this case. Alice has not filed any request for administrative expense, except as noted in the exhibit attached to Gary's objection, as Exhibit "A". On March 14, 2005, Alice filed her first response to Gary's objection and attached Exhibits "A(a)," "A(b)," "B." On April 14, 2005, Alice filed a supplemental response and attached Exhibits "C," "D [comprised of: Jan. 29, 1999 letter to Gary from Alice; Sept. 12, 2000 letter to Gary from Alice; undated letter to Gary from Alice regarding Brandt and Suite 204]." Exhibit "C" is an affidavit by David Byerly, who was not present at the time of the hearing to be available to cross examination by Gary. At the time of the hearing, Alice offered the above referenced exhibits; Gary had not objections to such exhibits, except Exhibit "C," the affidavit. The Court sustained Gary's objection to Exhibit "C" and admitted the other exhibits identified above.

This case was filed on February 27, 1997, as a chapter 11 case. The case was converted to a chapter 7 case on December 18, 1997, and Gary was appointed the trustee on December 24, 1997.

Gary's objection to Alice's request for payment is a core proceeding under 28 U.S.C. § 157(b)(2)(A), and (B). The Court has reviewed the exhibits, the testimony and applicable law and is ready to render a decision. This memorandum contains the Court's findings of fact and conclusions of law.

As discussed below, the Court concludes that Alice has submitted a request for payment of an administrative expense, as reflected in Exhibit “A,” attached to Gary’s objection. The services rendered and costs incurred arose after the conversion of this case from a chapter 11 case to a chapter 7 case, a portion of which services were done at the request of the trustee. The Court grants Alice an administrative expense pursuant to 11 U.S.C. § 503(a), entitled to a priority under 11 U.S.C. § 507(a)(1), and a distribution priority under 11 U.S.C. § 726(b), in the amount stated herein.

### **DISCUSSION**

Gary contends Alice’s request for services rendered and expenses incurred constitutes an informal proof of claim. Alice contends that she performed services on behalf of the estate. In reviewing the exhibits and the testimony the Court concludes that all services rendered and expenses incurred occurred postconversion.

Alice testified that she worked as the office manager prepetition and during the pendency of the chapter 11 for Debtor through arrangements made with David Schlosser. At the time of the conversion, Alice testified that Mr. Schlosser did not have any money to continue paying her as an office manager. She testified she became unemployed but decided to stay on to handle the day-to-day operations. After the conversion of the case from a chapter 11 to chapter 7 case, and at the request of Gary, Alice testified she continued to be involved in the day-to-day operations of office and looked after the bills received in the office. Alice testified she also served as the Developer’s homeowner’s association representative prepetition, and during the pendency of the chapter 11. She testified that she continued as a board representative postconversion at the request of Gary, as the trustee through the conversion succeeded to the developer’s right to have

board members designated by him to serve for a period of two years. *See* Exhibits “A(a)” and “A(b)”.

Alice testified that she assisted the trustee as he requested and got documents for the trustee. Alice testified and Gary confirmed that neither of them discussed compensation for the services rendered and expenses incurred. Gary testified in his capacity as the attorney for the trustee that he had not received letters from Alice concerning matters discussed at all the board meetings for which Alice attended. He testified he may have received some information on the board meetings. Alice testified that she sent board minutes to Gary until she was informed by other board members that the secretary of the board was forwarding minutes to Gary.

Alice testified that she did not get paid perconversion for being a board member and so was not particularly concerned about payment. She further testified that she had not previously billed Gary for any time or expenses until she sent to Gary the invoices contained in Exhibit “A.” No invoices had been submitted from Alice to Gary from the date of conversion through March 31, 2004.

She testified that she paid an electrical bill for the office in the approximate amount of \$38.00, and several smaller bills for \$6.00 to \$7.00 each. She testified the total was \$68.00, and no contrary evidence was submitted.

Alice testified she stopped going to board meetings in early 2004. Alice testified that she charged \$15 to \$20 per hour for other work similar to the work she performed for Gary postconversion. She testified she used \$12.00 per hour in the invoices, Exhibit A, as she felt that was reasonable. No contrary evidence exists in the record.

Gary testified that he had not discussed compensation with Alice. He testified that the

other board members did not receive compensation from any source, including the estate. Gary did testify that Alice had rendered some services and incurred expenses that benefitted and preserved the estate, but disputed whether Alice should receive any compensation for serving as a board member. Gary testified that he did not object to her recovering actual expenses incurred on behalf of the estate.

Alice's rendered services and incurred expenses, as reflected on Exhibit "A", are not prepetition and do not constitute a formal or informal claim, payable by the estate. *See* 11 U.S.C. §§ 501 and 502(b); and *In the Matter of Pizza of Hawaii*, 761 F.2d 1374 (9th Cir. 1985). Furthermore, Alice was not employed by the trustee, subject to Court approval, under 11 U.S.C. § 327. Consequently, Alice is not entitled to compensation as a professional under 11 U.S.C. § 330(a).

In reviewing the testimony and evidence the Court concludes that Alice's invoices for the identified services and expenses constitute a request for the payment of administrative expenses under 11 U.S.C. § 503(a) and (b)(1)(A). Alice testified that she continued to be involved in the day-to-day operations of office and looked after the bills received in the office at the request of the trustee. The trustee confirmed Alice's continued services to the estate. She further located and compiled records and copied checks and statements involving the Russell Brandt condominium unit and payment of such unit in full. She prepared for and traveled to a hearing involving Mr. Brandt's unit. The Court finds that such services benefitted and preserved the estate and were rendered after the conversion of the estate from a chapter 11 case to a chapter 7 case. Given the testimony that none of the Esplanade Homeowner's Association board member's received compensation for their time served as a board member, and without evidence

to the contrary, the Court finds that the time Alice served as a board member, as a representative for the trustee, is not compensable from the estate.

As an administrative expense and based on the invoices submitted as Exhibit “A” and on other evidence, Alice is entitled to compensation for the hours associated for miscellaneous tasks, which the evidence establishes was for day-to-day operations of the office and for looking after the bills received in the office provided by Alice at the request of the trustee:

30 ½ hours at \$12.00 per hour	\$366.00
2 hours at \$12.00 per hour	\$ 24.00
11 ½ hours [associated with Russell Brandt unit] @ \$12.00 per hour	\$138.00
3 hours at \$12.00 per hour	\$ 36.00
4 hours [time associated with request for admin. exp. and travel time]@ \$12.00/hr	<u>\$ 48.00</u>
Subtotal	\$612.00

PLUS

Out-of-pocket electrical bill and other expenses:	\$68.00	
Mileage expense for Brandt hearing[220 miles @ \$.34/mile]	\$74.80	
Mileage expense for admin. exp. hr. [220 miles @ \$.34/mile]	<u>\$74.80</u>	
Subtotal		<u>\$217.60</u>
Total		\$829.60

The Court has estimated Alice’s time and travel associated with submitting and attending the hearing to establish her request for payment of an administrative expense based upon her travel time established for the Russell Brandt hearing of three hours and including an additional 1 hour for preparing and attending the hearing on April 21, 2005. The Court declines to award Alice any compensation for the 54 hours of board meetings she attended as the trustee’s representative, because the evidence does not support such an award. No evidence exists in the record that other board member received any compensation. Based upon the above discussion and for cause,

IT IS ORDERED that the Court will issue a separate Order sustaining the trustee's objection to the claim submitted by Alice Ruckman, and awarding \$829.60 to Alice Ruckman as an administrative expense pursuant to 11 U.S.C. § 503(a), entitled to a priority under 11 U.S.C. § 507(a)(1), and a distribution priority under 11 U.S.C. § 726(b).

BY THE COURT

A handwritten signature in cursive script, reading "Ralph B. Kirscher", is written over a horizontal line.

HON. RALPH B. KIRSCHER  
U.S. Bankruptcy Judge  
United States Bankruptcy Court  
District of Montana